nor by his deserting her and living in adultery,[12] nor even by a decree of divorce *a mensa et thoro* pronounced against him.[13] In accordance with the policy indicated by these decisions, and inasmuch as the effect of the legitimation statute is to render the once illegitimate issue capable of inheriting from the mother,[14] thus satisfying the requirements of Littleton's definition, one would expect the question proposed to be answered in the affirmative. It was so answered the only time it has been presented to a court of last resort.[15]

The principal case reaches an opposite conclusion, setting up as a requisite for curtesy the birth of issue during coverture. No decision of the highest court of Virginia requires this position.[16] Coke, it is true, says that the husband must plead that he had issue born during the marriage,[17] but this is only because no other fact at common law made the issue heritable. The rule should cease when the reason for it ends. The case on which the court chiefly relies holds merely that the *adoption* of a child gives no right to curtesy.[18] But in that case the difficulty was that the child was not the *issue* of the adopting parent. Even were the matter *res nova*, the policy of the decision should be criticized, in that it removes a potent inducement to legitimate the child.[19]

RIGHT TO RESCIND STOCK SUBSCRIPTIONS OBTAINED BY FRAUD. — Early English cases denied the right of rescission to one who had been induced by the fraud of an agent of a corporation to subscribe for its stock, on the ground that its agents have no authority to make fraudulent representations.[1] Rescission is now, however, universally allowed, generally on the theory that an agent empowered to obtain subscriptions has authority to make such representations,[2] and sometimes on the additional ground that the corporation cannot claim the benefits of the subscription without assuming the representations that procured them.[3] But when the subscription contract was obtained by a promoter before the organization of the corporation, rescission is not allowed; since, first, the relation of agency did not exist because of the non-existence of any principal, and, secondly, ratification of the fraud cannot be presumed in absence of knowledge of it.[4]

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[12] Wells *v.* Thompson, 13 Ala. 793. See Sidney *v.* Sidney, 3 P. Wms. 269, 276.
[13] Smoot *v.* Lecatt, 1 Stew. (Ala.) 590.
[14] See cases cited, note 6.
[15] Hunter *v.* Whitworth, 9 Ala. 965.
[16] See Carpenter *v.* Garrett, 75 Va. 129; Breeding *v.* Davis, 77 Va. 639.
[17] See CO. LIT. 29 b.
[18] Murdock *v.* Murdock, 74 N. H. 77.
[19] A contrary decision in the principal case would not give curtesy to the father of a bastard, by statute made its mother's heir, without the marriage of the parents, for a man can have curtesy only in the lands of his wife.

[1] Royal British Bank, *ex parte* Nicol, 5 Jur. N. S. 205. It was necessary that the fraud of the agent be acquiesced in at a general meeting. Ayre's Case, 25 Beav. 513.
[2] Waterhouse *v.* Jamieson, L. R. 2 H. L. Sc. 29; Waldo *v.* R. R. Co., 14 Wis. 575.
[3] Henderson *v.* R. R. Co., 17 Tex. 560. See COOK, CORPORATIONS, § 140.
[4] Oldham *v.* Mt. Sterling, etc. Co., 103 Ky. 529. *Contra*, McDermott *v.* Harrison, 9 N. Y. Supp. 184. See 16 HARV. L. REV. 380.

Of course the right of rescinding the contract for fraud may be exercised only when it is equitable so to do. Hence it cannot be done after the rights of innocent third parties have intervened. But there is no general principle that the rights of creditors of the fraudulent party after the latter's insolvency are superior to the defrauded party's right to rescind.[5] A recent case in Georgia, therefore, seems correct in allowing rescission even after the corporation had become insolvent and a receiver had been appointed. *Gress* v. *Knight*, 68 S. E. 834 (Ga.). It is well settled in England, on the contrary, that rescission will not be allowed after proceedings have been taken to liquidate the corporation's affairs.[6] This result may be attributed to the construction of the Companies Act.[7] Even in the absence of statutes, some courts in this country have squarely adopted the English rule.[8] Rescission has more often not been allowed because of the existence of other equitable grounds for denying such relief. Thus it has been refused when the subscriber has unnecessarily delayed availing himself of this remedy, since it would be inequitable to allow him to retain the option of affirming or rescinding according to which course should prove ultimately the more advantageous.[9] And it is well settled that once he is put on inquiry, he must use due diligence to discover whether he has been defrauded.[10] There have, indeed, been *dicta* making the fault of the defrauded party the only bar to the exercise of the right.[11] In the cases, however, where rescission has actually been allowed, it has not appeared that any new and substantial liabilities were incurred after the subscriber contracted to take stock.[12] As is said in the principal case,[13] the fact that such liabilities had been created should destroy the right to rescind; for a subscriber to stock must know that future creditors of the corporation will rely on his apparent relation to it as a stockholder, as shown by the amount of outstanding capital stock. Therefore when these are subsequent creditors, he should be prevented, after insolvency of the corporation, from escaping his liability to the corporation as a stockholder.[14]

EVIDENCE OF OTHER CRIMES TO PROVE THE DEFENDANT GUILTY OF THE CRIME CHARGED. — Evidence of the defendant's having committed a crime like that for which he is on trial will not be admitted merely because of this similarity.[1] For it by no means follows from the defendant's once having been induced to perpetrate an offense, that he would do it

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[5] Donaldson *v.* Farwell, 93 U. S. 631.

[6] Oakes *v.* Turquand, L. R. 2 H. L. 325.

[7] The Companies Act of 1862, 25 & 26 Vict. c. 89, §§ 23, 38, 74, provides that any person who has agreed to become a member shall be a contributory.

[8] Moosbrugger *v.* Walch, 89 Hun (N. Y.) 564.

[9] *In re* Estates Investment Co., L. R. 9 Eq. 263.

[10] Tierney *v.* Parker, 58 N. J. Eq. 117.

[11] Upton *v.* Englehart, 3 Dill. (U. S.) 496, 502.

[12] Newton Nat. Bank *v.* Newbegin, 74 Fed. 135; Stufflebeam *v.* De Lashmutt, 83 Fed. 449.

[13] See also Stewart *v.* Rutherford, 74 Ga. 435.

[14] Stufflebeam *v.* De Lashmutt, *supra*.

[1] People *v.* Molineux, 168 N. Y. 264; Boyd *v.* United States, 142 U. S. 450.